FEDERATION REPORTS

SUPPIAH CHETTIAR v. ONG PEE KOI AND ANOTHER.

[Orig. Civ. Juris. (Thomson, J.) March 20, 1951]

[Ipoh — Civil Suit No. 368 of 1950]

Japanese Judgments & Civil Proceedings Ordinance, 1946 — Appointment of Agent as Receiver of his Principal's property — absence of jurisdiction and irregular assumption of jurisdiction — Power of Attorney — construction — Intention of Donor — Principal's liability for acts of agents within the apparent scope of his authority — Contract Ordinance, 1950, s. 186.

By a Power of Attorney plaintiff appointed S. his attorney with power to substitute. Clause 11 authorised the attorney "to apply for orders to sell or sell privately or by public auction any property whether belonging to me or to any defaulting debtor". Clause 12 which also gave a power to sell lands, etc. and Clause 13 a power to charge, etc. were deleted, red ink lines being drawn through them.

S. substituted L.C. as plaintiff's attorney.

Plaintiff gave another power of attorney to L.C. to sell a specific piece of land.

On the ex parte application of L.C. (who presumably believed he had no authority to sell lands), plaintiff then being in India, Japanese Court by order dated 15th December, 1944 appointed him Receiver of plaintiff's property and authorised sale of plaintiff's 3 pieces of land.

On 19th December, 1944, L.C. sold 2 pieces to 1st defendant and third piece to 2nd defendant. L.C. executed three documents in respect of each transaction, the first being an option to purchase, the second being a transfer under the Land Code and the third an agreement allowing the purchaser to enter into possession. L.C. described himself as "Appointed Receiver of the assets of Plaintiff" in the first and third documents. The second document (transfer) was executed in name of plaintiff and signed "L.C. signature of transferor By his appointed Receiver".

The transfers were not registered.

On application of plaintiff the Japanese decree was set aside.

Plaintiff then brought these proceedings against defendants for possession of the lands. Defendants counterclaimed claiming that plaintiff was a bare trustee and asked for a vesting order.

Held, there being no pending litigation in respect of plaintiff's property, there was on the face of the Japanese Court proceedings a complete lack of jurisdiction ab initio and therefore the Japanese decree is a nullity. Distinction between "absolute want of jurisdiction" and "an irregular assumption of jurisdiction" discussed.

Held further, that such a decree cannot be substituted and cannot be set up by a defendant in any proceedings and it must therefore be treated as if it never existed.

Held further, (i) that extrinsic evidence as to intention of the Donor is not admissible to construe the power of attorney and the deleted clauses cannot be looked at.

(ii) that Clause 11 should be construed disjunctively and upon a proper construction the power of attorney empowered L.C. to sell plaintiff's lands.

(iii) that L.C's opinion as to extent of his power is of no value and cannot affect defendants' position.

Held further, that by his being appointed Receiver L.C. did not cease to be plaintiff's agent.

Held further, that L.C. having bound himself by contract on which he was personally liable, and the agency having subsisted at all material times, plaintiff as principal was also liable under 186 of the Contract Ordinance and bound by the transactions.

Cases referred to :—

(1) *Gurdeo Singh v. Chandrikah Singh* I.L.R. 36 Cal. 193 at page 205.

(2) *Paresh Nath Mallick v. Hari Charan Dey* I.L.R. 38 Cal. 622.

(3) *Chitambar Shrinivasbhat v. Krishnappa* I.L.R. 26 Bom. 543.

(4) *Malkarjun bin Shidramappa Pasare v. Narhari bin Shivappa* L.R. 27 I.A. 216.

(5) *Owen v. Homan* L.R. 4 H.L. 997.

(6) *Salter v. Salter* (1896) P. 291.

(7) *Leney & Sons, Ltd. v. Callingham* (1908) 1 K.B. 79.

(8) *Simmons v. Rudall* (1851), 1 Sim. (N.S.) 115 at page 136.

(9) *Inglis v. Buttery* (1878), 3 App. Cas. 552.

(10) *Bryant v. La Banque du Peuple* (1893) A.C. 170 at page 177.

(11) *In re Dowson and Jenkins's Contract* (1904) 2 Ch. 219 at page 222.

(12) *In re Flowers & Co.* (1897) 1 Q.B. 14.

(13) *Shib Lal v. Sham Das* (1918), 47 I.C. 353.

ACTION.

S. P. Seenivasagam for the plaintiff.

B. K. Das for the defendants.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Thomson, J. : — This action arises out of certain dealings in land during the Japanese occupation.

In order to appreciate the issues involved it will be convenient to set out the facts of the case, which are not in dispute.

For some years before the Japanese occupation the plaintiff who possessed considerable property in Malaya had been residing in India. On 26th June, 1937, in India, he executed a power of attorney in favour of one Saminathan. The terms of that instrument will call for detailed consideration at a later stage and it is sufficient to observe here that it contained a power enabling Saminathan to appoint a substitute. On 14th March, 1941, Saminathan exercised that power and appointed one Letchumanan Chettiar in his place as attorney for the plaintiff.

On 15th December, 1944, Letchumanan Chettiar issued an Originating Summons in the Japanese Court (No. 136 of 2604), which was issued *ex parte*, asking for an order that he be appointed receiver of the assets of the pressent plaintiff and that he be granted leave as such receiver to sell the three pieces of land which are involved in this action for a sum of not less than $15,000. In his affidavit in support of that application Letchumanan Chettiar stated that the present plaintiff was in India, that he was unable to get in touch with him and that the power of attorney which he held did not "confer any power to sell, charge or lease". He went on to state that he was being pressed for payment of liabilities of the plaintiff by the Japanese Custodian of Enemy Property and by the Indian Independence League and that as the plaintiff's estates were not producing any income he was desirous of selling three pieces of land to raise the necessary funds.

The order prayed for was made on 15th December, 1944, and Letchumanan Chettiar thereupon sold the land in question to the present defendants for $19,012.50.

Two pieces of the land were sold to the first defendant for $10,137.50, and one piece was sold to the second defendant for $8,875.00. In that connection, Letchumanan Chettiar executed the following three instruments in respect of each of the defendants all of which are dated 19th December, 1944 :—

(i) A document headed "OPTION" whereby he acknowledges receipt of the purchase price from the defendant and gives him an option to purchase the land in question. In this document Letchumanan Chettiar describes himself as the "appointed Receiver of the Assets of Suppiah Chettiar . . . . . vide Originating Summons No. 136/2604." This document is not stamped.

(ii) A Memorandum of Transfer under section 110 of the Land Code purporting to transfer the land to the defendant. This document is executed in the name of Suppiah Chettiar and is signed

"Letchumanan Chettiar
Signature of transferor
By his appointed Receiver."

This document is stamped.

(iii) An Agreement which recites the Memorandum of Transfer and by which Letchumanan Chettiar agrees to allow the purchaser to take possession of the land and to assist him to obtain the necessary permit (presumbly from the occupying power) to purchase the land. In this document Letchumanan Chettiar describes himself as

"Appointed Receiver of the Assets of Suppiah Chettiar . . . vide Originating Summons No: 136/2604."

This document is stamped.

The transfers thus executed have not yet been registered but apparently the defendants entered into possession of the land at or about the time they were executed and have remained in possession to this day.

The purchase money was paid to Letchumanan Chettiar who kept detailed accounts of its disposal. I am not concerned with the details of these accounts but generally speaking they show the money was paid out in connection with the business of plaintiff, in making deposits in the Yokohama Specie Bank and the Japanese Post Office Savings Bank, and in the maintenance of Letchumanan Chettiar. In this connection it is admitted that it is in accordance with the Chettiar custom that Letchumanan Chettiar should provide for his own maintenance out of his principal's monies, although I understand the plaintiff would be prepared to allege that some of the amounts charged in this connection are excessive.

On 30th March, 1950, in this Court, the plaintiff commenced proceedings against Letchumanan Chettiar and the two present defendants to have the Japanese Order dated 15th December, 1944, set aside on the ground that it was based on principles unknown to the existing laws. That application was not opposed (though it probably could have been opposed with success) and an order in terms of it was made on 13th September, 1950.

On 13th October, 1950, the plaintiff commenced the present proceedings in which he claims in effect that he is the legal and equitable owner of the land which Letchumanan Chettiar purported to sell to the defendants on 19th December, 1944, and asks for possession and an account of mesne profits. The defendants deny the claim and by way of counterclaim ask for a declaration that the plaintiff is a bare trustee of the land for them and for vesting orders to vest the lands in the defendants as legal and equitable owners or (alternatively) for restitution of the purchase money and compensation.

The case has been argued with great ability and thoroughness by Mr. S. P. Seenivasagam for the plaintiff and Mr. B. K. Das for the defendants, and I trust I shall not be regarded as unappreciative of the

assistance I have derived from their arguments if I say that to my mind the case turns on two points and two points only. One of these is the effect of the Japanese decree of 15th December, 1944. The other is the construction to be placed upon the original power of attorney granted by the plaintiff on 26th June, 1937.

As regards the Japanese decree, I have come to the conclusion that so far as these proceedings are concerned it must be disregarded and treated as if it had never existed. I do not base that conclusion upon the fact that it has already been set aside by this Court under section 3 of the Japanese Judgments and Civil Proceedings Ordinance. I am thus not called upon to decide the question which has been argued in this and in other cases as to whether the effect of such a setting aside is to render the Japanese decree to which it relates void *ab initio* or from the date of setting aside so as to protect rights which have been acquired by innocent third parties. On that question, however, it may be useful if I make certain observations.

In my opinion the answer depends on the circumstances of each individual case. In the first place, section 3 of the Japanese Judgments Ordinance gives the Court a very wide discretion as to the setting aside of Japanese decrees and the rights of innocent third parties (if any) is one of the matters the Court will take into account in exercising that discretion. And in the second place a distinction must be drawn between a case where, as here, as I shall shortly demonstrate, there is on the face of the proceedings a complete lack of jurisdiction *ab initio* and cases where the proceedings at their inception have been on the face of it regular and within the jurisdiction but are subsequently shewn to have been taken without jurisdiction as a result either of some mistake on the part of the Court or of its having been misled by a party. This distinction, to my mind, is comparable with the distinction between an "absolute want of jurisdiction" and an "irregular assumption of jurisdiction" drawn by Mookerjee, J., in the Calcutta case of *Gurdeo Singh v. Chandrikah Singh*[1] which was a case where the Court had unquestionable jurisdiction in the litigation before it but where the litigation had been commenced in an irregular way. I am confirmed in this view by a consideration of other cases cited by Mr. Das in argument. *Paresh Nath Mallick v. Hari Charan Dey*[2] was a case where there had been lack of necessary service which was only discovered subsequently. *Chitambar Shrinivasbhat v. Krishnappa*[3] was a case where a decree had been obtained by fraud on the part of one of the parties. *Malkarjun bin Shidramappa Pasare v. Narhari bin Shivappa*[4] was another case where it transpired at a late stage of the proceedings that there had been want of proper service.

No case has been cited, and I very much doubt if one exists, where as here the facts are that a Court has done something which on the material before it there was clearly and patently no power to do. In normal times courts of law do not do such things and it is hardly surprising that there should be a lack of guidance in the authorities as to the consequences of such aberrations when as here they do occur.

In parenthesis I should say in common fairness to the Japanese Courts that they were faced with a difficulty of some magnitude. There were in Malaya a large number of money-lending businesses the proprietors of which were in India and which were being carried on by agents. Heavy contributions for war purposes were being demanded from these businesses by the *de facto* Government and by organisations sponsored by it such as the Indian Independence League, and these contributions could in many cases only be met by selling part of the assets of the business which generally consisted of interests in land. The agents, either because they genuinely believed they had no authority to do so or because they were reluctant to exercise such authority on their own responsibility, came, as is the habit of moneylenders when in trouble, to the Courts and the Courts which were mainly staffed by English trained lawyers attempting to apply the pre-war Federated Malay States body of law devised the fiction of appointing the agent to be the receiver of his principal's estate and granting him leave to sell specified pieces of land on much the same principles as leave is granted to the administrator of a deceased person, that is subject to a minimum price fixed by the Court and subject to obligations to give security and to account to the Court for the proceeds of the sale. No doubt this procedure was based on what was thought to be an application of the doctrine of agency of necessity to the circumstances of the times and indeed it is difficult to think of a procedure better suited to relieve the necessities of the agent and at the same time safeguard the interests of the principal. What it did not do, was to provide adequate protection for persons who purchased land in good faith under it for it was based upon a fiction which the Courts of to-day in the absence of any legislation have no authority to recognise.

Returning to the present case, I base my opinion that the Japanese decree in question must be treated as if it had never existed on certain later provisions of the Japanese Judgments Ordinance. By section 5(1)

a decree of this Court may be substituted for a decree of the Japanese Court, but by section 5(6)(a) no such substitution can be made if the Japanese Court acted without jurisdiction. Then by section 7 it is provided that "no Japanese decree shall be pleaded by way of set-off or counterclaim or otherwise in any proceedings unless the . . . . . decree . . . of an appropriate Court has been subsituted for such Japanese decree under the provisions of section 5 of this Ordinance".

In other words, where the Janpanese Court has acted without jurisdiction its decree cannot be replaced by an order of this Court and so cannot be set up in any way by a defendant in any proceedings in this Court.

In the present case I think it is clear beyond any possibility of argument that the Japanese Court did act without jurisdiction. At all material times the law has been the same (see section 4 of the Japanese Judicial Organisation Ordinance, 1943) and the only provisions relating to the appointment of receivers are those contained in section 49(i)(j) of the F.M.S. Courts Enactment (now Schedule II section 10 of the Courts Ordinance, 1948) and section 500 of the Civil Procedure Code. Section 49(i)(j) of the Courts Enactment can be disregarded because in terms it only enables the Court to appoint a receiver "to provide for the interim preservation of property the subject matter of any cause or matter". The relevant portion of section 500 of the Civil Procedure Code is as follows :—

"500. (i) Where it appears to the Court to be just and convenient the Court may by order—

appoint a receiver of any property".

That section follows section 25(8) of the Judicature Act 1873 (now section 45(1) of the Judicature Act, 1925) which gave effect to the principles by which the Court of Chancery was guided in appointing a receiver before the Judicature Act. These principles were set out by Lord Hatherley in the case of *Owen v. Homan*[5] and the following passage is quoted from His Lordship's judgment at p. 1032 :—

"The receiver, if appointed in this case, must be appointed on the principle on which the Court of Chancery acts, of preserving property pending the litigation which is to decide the right of the litigant parties. In such cases the Court must of necessity exercise a discretion as to whether it will or will not take possession of the property by its officer. No positive unvarying rule can be laid down as to whether the Court will or will not interfere by this kind of interim protection of the property."

This restriction on the power of the Court to appoint receivers in cases where such appointment is necessary for the protection of property pending litigation is further illustrated by the case of *Salter v. Salter*[6] where it was held that a receiver could not be appointed before a writ had been issued to commence an action, and the case of *Leney & Sons, Ltd. v. Callingham*[7] in which Farwell, L.J., pointed out that the appointment of a receiver was in the judicial discretion of the Court but went on to observe :—

"The question of the exercise of the judicial discretion was always based, and is still based, upon this, that there is property in dispute to some interest in which the plaintiff shows a prima facie title; and preservation is ensured until the rights of the parties can be finally determined."

When Letchumanan Chettiar made his application to be appointed a receiver no proceedings of any sort had been commenced relating to the property of the present plaintiff and no property of his was or was alleged to be in dispute. That fact disposes of any suggestion that the Japanese Court had any jurisdiction whatever to entertain the application, still less to make any order upon it. It can no more be said that it had jurisdiction to entertain such an application than it can be said it would have had jurisdiction to attempt to adjudicate upon a suit in which the plaintiff showed no cause of action though the remedy asked for was one which in other circumstances it might well have jurisdiction to give.

Having thus disposed of the Japanese decree, I turn to the question of whether independently of it Letchumanan Chettiar had power as the plaintiff's agent to sell the plaintiff's land. For the plaintiff it was contended that he had no such power. This contention was based, in the first place, on certain circumstances relating to the instrument of agency, that is to say, the power of attorney dated 26th June, 1937; in the second place, on the fact that when the plaintiff subsequently desired to sell a piece of land in Malaya he granted to Letchumanan Chettiar a specific power of attorney for that purpose dated 3rd October, 1941; and, in the third place, on the fact that Letchumanan Chettiar apparently was of the opinion that he had no power to sell land for in the affidavit supporting his application to the Japanese Court for the order to sell he said "the said powers of attorney do not confer any power to sell, charge or lease." It was further contended for the plaintiff that even if in all the circumstances of the case the necessary power to sell was conferred upon Letchumanan Chettiar that power was extinguished by the order of the Court appointing him a receiver.

With regard to the statement made by Letchumanan Chettiar in his affidavit, I propose to dispose of it merely by saying that in so far as it is an admission it is binding only on himself and in so far as it is an opinion it is his own opinion and without value.

Apart from this, however, the question of the construction to be placed upon the power of attorney of 26th June, 1937, is one of considerable difficulty and calls for a detailed examination of the document in question.

That document consists of four pages. The first page, which is written by hand on Indian stamped paper, contains the actual appointment of Saminathan to be attorney of the plaintiff. The following pages which set out the powers of the attorney consist of a printed form, apparently printed in Ipoh, portions of which have been deleted by having lines drawn through them in red ink. The instrument in question being a deed, these alterations are to be presumed to have been made before its execution (see *Simmons v. Rudall*[8]).

Generally speaking, it is not unfair to say that the document gives the grantee wide and extensive powers to carry on the business of the grantor who is described as a moneylender.

Clause 11 give the following powers :—

"To apply for Orders to Sell or Sell privately or Sell by Public Auction, any property whether belonging to me or to any defaulting debtor".

Then follow the deleted clauses which read as follows :—

"12. To sell to any person all or any of my lands, leases, charges, negotiable instruments, movable or immovable property, whether now belonging to me or which shall hereafter belong to me.

13. To charge, mortgage or borrow money on the security of my lands or otherwise as my Attorney may wish".

These clauses are marked each with a cross in pencil, they are bracketed at the side in black ink and they have four red ink lines drawn through them in such a way as to make it clear that the whole of the words is intended to be deleted.

From the fact of these deletions and from the words which were thus deleted it was argued that the inference should be drawn that the document expressly excluded any authority to the grantee to sell any of the land of the plaintiff. In my opinion, such an inference cannot be drawn as against the present defendants, whatever may be the position as regards Letchumanan Chettiar. I say so for three reasons.

In the first place, to look at the deleted words would be to admit extrinsic evidence to vary the terms of an instrument in writing. On that point I would refer to the decision of the House of Lords in the Scottish appeal of *Inglis v. Buttery*[9]. That case was concerned with the interpretation of a contract from which certain words had been deleted but were still legible, and in dealing with the question of the deleted words Lord Hatherley made the following observations (at page 558) :—

"Nor can I think, and I believe your Lordships will concur with me in this opinion, that it is legitimate to look at those words which appear upon the face of the agreement with a line drawn through them, and which are expressly, by the intention of all the parties to the agreement, deleted, that is to say, done away with and wholly abolished. It is not legitimate to read them and to use them as bearing upon the meaning of that which has become a real contract between the parties, namely, the final arrangement of the document which we must now proceed to construe."

In the second place, if the deleted words are looked at at all, they can only give guidance as to the intention of the grantor and in the construction of a power of attorney this intention cannot be considered. As was said in the case of *Bryant v. La Banque du Peuple*[10] :—

"Powers of attorney are to be construed strictly — that is to say, that where an act purporting to be done under a power of attorney is challenged as being in excess of the authority conferred by the power, it is necessary to show that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument, either in express terms or by necessary implication."

Again, in the case of *In re Dowson and Jenkins's Contract*[11] it was said by Vaughan William, L.J. :—

"Legal certainty is a good thing, and generally you cannot have good without having the attendant evil. The law says that these authorities must be strictly construed according to their terms, because the rights of other persons may be affected."

And in the third place, even if I were at liberty to consider the deleted words I am wholly unable to say which of several available inferences is to be drawn from the fact of their deletion. It might be argued that the deletion shows an intention to exclude power to sell land; but this would appear to be in conflict with Clause 11 the terms of which have already been quoted. It might be argued that the deletion shows an intention to exclude a power to sell movable property; but this would appear to be in conflict both with Clause 11 and with Clause 17 which gives power *inter alia* to "sell the produce of my lands". Yet, again, it might be argued that the words were deleted because it was thought that in view of the decision in *In re Dowson and Jenkins's Contract, supra,* their presence might lead to it being held that the grantee had no power to sell land of which the grantor was the mortgagee. In that case the Court was concerned with a power "to sell any real or personal property now or hereafter belonging to me" and it was held that these words were insufficient to give the agent power to sell land of which his principal was mortgagee.

I now come to the power of attorney dated 3rd October, 1941, whereby the plaintiff authorised Letchumanan Chettiar to sell a specific piece of land

in Malaya. This contains no reference to the power of attorney dated 26th June, 1937, in favour of Saminathan and to consider it would again be to admit extrinsic evidence to vary the terms of that original power of attorney. Again, too, the objection arises that even if it be considered the inference to be drawn from it is by no means clear. There is nothing to show that the grantor was aware that Saminathan had already exercised his power of substitution in favour of Letchumanan Chettiar (as he had done on 14th March, 1941) and, in any event, even had the grantor been aware of that substitution it is by no means clear whether he granted a new power of attorney because he was of the opinion that the original one did not confer a power to sell land or because he was of the opinion, probably correctly, that it only conferred power to sell land in the course of and for the purposes of his business.

Having arrived at these results, it remains to construe the provisions of Clause 11 of the original power of attorney which I have already quoted and which I now quote again. It is a power "to apply for for Orders to Sell or Sell privately or Sell by Public Auction, any property whether belonging to me or to any defaulting debtor". I would observe *in limine* that whatever powers of disposal that gives to the grantee it only permits the exercise of these powers for the purposes of the grantor's business. That, I think, is abundantly clear from the terms of the instrument as a whole. The real question is whether the first fourteen words of the Clause are to be read conjunctively or disjunctively. In other words, is it a single power to apply to the Court for authority to sell or sell privately or sell by public auction, or is it three powers — a power to apply to the Court for an order to sell, a power to sell privately and a power to sell by public auction.

On consideration, I am of the opinion that the latter is the view to be preferred. In the first place, if the view that it only gives a single power be adopted the words "Sell or" where they first occur would appear to be redundant and meaningless and it is a well known principle of construction that an effort should be made to assign where possible a meaning to every word in the writing under consideration. In the second place, it is to be observed that the Clause relates to "any property whether belonging to me or to any defaulting debtor". It is well settled law that an agency is terminated where either party becomes incapable by reason of death, bankruptcy or unsoundness of mind. Bearing that in mind, I can conceive of no circumstance in which an agent could by virtue of his instrument of agency apply to the Court for an order to sell his principal's property although, of course, he might frequently have occasion to apply for such authority to sell the property of a defaulting debtor.

Finally, I have examined the instrument itself with some care and have observed certain facts as to the use in it of the words "and" and "or". In nineteen instances the word "to" is used to introduce a plurality of verbs. In twelve of these instances the conjunction used is "and". In the other seven instances, which include Clause 11, the conjunction used is "or". In each of these latter instances apart from Clause 11 the conjunction is clearly used disjunctively. In Clause 17, there is a power "to take down, rebuild, alter, improve *or* repair" buildings and a power "to collect, store *or* sell" produce. In Clause 20, there is a power "to engage, employ *or* dismiss" servants. In Clause 21 there is a power "to open *or* operate" banking accounts. In Clause 25 there is a power "to accept, endorse, discount or otherwise deal with" cheques, and in Clause 28 there is a power to do or to concur with other persons in doing certain acts. In each of these instances the word "or" is used disjunctively. That alone would seem to establish that the word "or" is similarly used in Clause 11. Moreover, Clause 11 is the only one where a verb is used adjectively and not as a substantive, and the only one where the word "or" is used otherwise than as well as in addition to between the penultimate and last members of a series of verbs used as substantives. This repetition of the conjunction has the effect of removing the ambiguity which would otherwise result from the adjectival use of the words "to sell" where they first occur and of making it clear that it is these words only that relate to the preceding words "apply for orders".

It follows then that the power of attorney of 26th June, 1937, gave Saminathan the power to sell the plaintiff's land for the purposes of the plaintiff's business and it is, I think, conceded that if that be so the power in question passed to Letchumanan Chettiar by virtue of the exercise of his power of substitution by Saminathan on 14th March, 1941.

There remains to be considered, however, how far that power was superseded by the subsequent appointment of Letchumanan Chettiar as receiver by the Japanese Court.

In this connection, my attention was invited to the English case of *In re Flowers & Co.*[12] and a number of other English cases where it was held that

a receiver appointed by the Court was a servant of the Court and not the agent of the party in respect of whose estate he had been appointed receiver. I have examined these cases with care and cannot find that in any one of them there is anything to suggest that the receiver in question before his appointment as such had been in any way entitled to act as an agent of the party. In them, moreover, I can find no support for the proposition that the appointment of a party previously lawfully appointed the agent of another party is necessarily and finally extinguished by his appointment as a receiver. My atteention was further invited to the Indian case of *Shib Lal v. Sham Das*[13] where it was held that a natural guardian who had also been appointed as statutory guardian could not claim to be free from the limitations imposed upon the exercise of her guardianship by the statute under which she was appointed. In that case, however, I can find no support for the proposition that the status of a natural guardian is finally and completely extinguished by his appointment as a statutory guardian.

It is not, however, necessary to consider the point at any length. The truth is that on this point, to put it colloquially, the plaintiff has tried to have it both ways. First of all, he says the appointment of Letchumanan as a receiver was void *ab initio* and so is no protection to the defendants in respect of any act done by Letchumanan Chettiar before the Japanese decree was set aside. Then he turns round and says that he can take advantage of the appointment to say that it operated to extinguish Letchumanan's agency under the original power of attorney. From the horns of that dilemna I can see no escape.

Having arrived at the conclusions that at all material times Letchumanan Chettiar was the agent of the plaintiff, and as such had power to sell the plaintiff's land for the purposes of the plaintiff's business, it is unnecessary to consider the exact style in which Letchumanan Chettiar purported to execute the document dated 19th December, 1944. Whether he styled himself "Suppiah Chettiar" or "Appointed Receiver of the Assets of Suppiah Chettiar" or indeed the Emperor of Japan, is wholly beside the point. The hands may be the hands of Esau but the voice is the voice of Jacob. There is no doubt that it is he who executed these instruments. It is he who bound himself by them and he is personally liable upon them. And once his subsisting agency is established then it follows by reason of section 186 of the Contracts Ordinance (formerly section 233 of the Contract Enactment) the plaintiff is also liable.

The claim is accordingly dismissed with costs to be taxed.

As regards the counterclaim, the defendants must succeed on this also. On this they are clearly entitled to the first of the two alternative remedies claimed by them, that is to say, to the declaration that the plaintiff holds the lands as trustee for them and to the necessary vesting order to vest the legal estate in them. There is a clear contract to sell land on which the plaintiff is liable, the full consideration has been paid and since the date of the contract the defendants have been in possession.

There will be judgment accordingly with costs.

Judgment for the defendants on the claim as well as on the counterclaim.

SUPPIAH CHETTIAR v. MATHUVA THEVER AND NINE OTHERS.

[Orig. Civ. Juris. (Thomson, J.) March 20, 1951]

[Ipoh — Originating Motion No. 7 of 1950]

Japanese Judgments and Civil Proceedings Ordinance 1946 s. 3 — Discretion of Court to set aside Order.

In this case the Plaintiff asked for an order to set aside a Japanese decree dated 16th January 1945 whereby one Mathuwa Thevar, who was then the attorney of the plaintiff, was appointed receiver of the assets of the plaintiff and was given leave to sell eight pieces of land belonging to the plaintiff. The grounds of the application was that the Japanese decree was made by the Court without jurisdiction and that it was based on principles unknown to the existing laws. The evidence adduced in the case showed that the decree was made without jurisdiction.

Held, (1) that a party who seeks to ask that a decree be set aside under section 3(4)(c) of the Japanese Judgments and Civil Proceedings Ordinance must show that the decree which he wishes to set aside is based on principles of substantive law unknown to the existing laws and that it is not sufficient to show merely that the Court passing the decree acted without jurisdiction; (2) that the Court had a discretion in making an order under section 3 of the Japanese Judgments and Civil Proceedings Ordinance and that on the facts of this case the Court could not exercise its discretion in favour of the applicant.

Case referred to :—

(1) *Suppiah Chettiar v. Ong Pee Koi and another.* p. 48 *supra.*

ORIGINATING MOTION.

M. S. Mahendran for the applicant.

S. M. Sharma for the respondents.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.